# Senate

General Assembly

**File No. 608**

***February Session, 2010***

Substitute Senate Bill No. 485

*Senate, April 21, 2010*

The Committee on Finance, Revenue and Bonding reported through SEN. DAILY of the 33rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING TAX FAIRNESS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective from passage and applicable to income years commencing on or after January 1, 2010*) (a) For purposes of this section, the combined group's net income shall be the aggregate net income or loss of every taxable member and nontaxable member of the combined group derived from a unitary business, which shall be determined as follows:

(1) For any member incorporated in the United States, included in a consolidated federal corporate income tax return, or filing a federal corporate income tax return, the income to be included in calculating the combined group's net income shall be such member's gross income, less the deductions provided under section 12-217 of the general statutes, as amended by this act, as if the member were not consolidated for federal tax purposes.

(2) For any member not included in a consolidated federal corporate income tax return but required to file its own federal corporate income

tax return, the income to be included in calculating the combined group's net income shall be such member's gross income, less the deductions provided under section 12-217 of the general statutes, as amended by this act.

(3) For any member not incorporated in the United States, not included in a consolidated federal corporate income tax return, and not required to file its own federal corporate income tax return, the income to be included in the combined group's net income shall be determined from a profit and loss statement that shall be prepared for each foreign branch or corporation in the currency in which the books of account of the branch or corporation are regularly maintained, adjusted to conform it to the accounting principles generally accepted in the United States for the presentation of such statements and further adjusted to take into account any book-tax differences required by federal or Connecticut law. The profit and loss statement of each such member of the combined group and the apportionment factors related thereto, whether United States or foreign, shall be translated into or from the currency in which the parent company maintains its books and records on any reasonable basis consistently applied on a year-to-year or entity-by-entity basis. Income shall be expressed in United States dollars. In lieu of these procedures and subject to the determination of the commissioner that the income to be reported reasonably approximates income as determined under chapter 208 of the general statutes, income may be determined on any reasonable basis consistently applied on a year-to-year or entity-by-entity basis.

(4) If the unitary business has income from an entity that is treated as a pass-through entity, the combined group's net income shall include its member's direct and indirect distributive share of the pass-through entity's unitary business income.

(5) All dividends paid by one member to another member of the combined group shall, to the extent those dividends are paid out of the earnings and profits of the unitary business, in the current or an earlier year, be eliminated from the income of the recipient. This provision

shall not apply to dividends received from business entities in the unitary business that are not a part of the combined group.

(6) Except as otherwise provided by regulation, business income from an intercompany transaction between members of the same combined group shall be deferred in a manner similar to the deferral under 26 CFR 11.1502-13. Upon the occurrence of any of the following events, deferred business income resulting from an intercompany transaction between members of a combined group shall be restored to the income of the seller and shall be included in the combined group's net income as if the seller had earned the income immediately before the event:

(A) The object of a deferred intercompany transaction is: (i) Resold by the buyer to an entity that is not a member of the combined group, (ii) resold by the buyer to an entity that is a member of the combined group for use outside the unitary business in which the buyer and seller are engaged, or (iii) converted by the buyer to a use outside the unitary business in which the buyer and seller are engaged.

(B) The buyer and seller are no longer members of the same combined group, regardless of whether the members remain unitary.

(7) A charitable expense incurred by a member of a combined group shall, to the extent allowable as a deduction pursuant to Section 170 of the Internal Revenue Code, be subtracted first from the combined group's net income, subject to the income limitations of that section applied to the entire business income of the group. Any charitable deduction disallowed under the foregoing rule, but allowed as a carryover deduction in a subsequent year, shall be treated as originally incurred in the subsequent year by the same member and the rules of this section shall apply in the subsequent year in determining the allowable deduction for that year.

(8) Gain or loss from the sale or exchange of capital assets, property described by Section 1231(a)(3) of the Internal Revenue Code and property subject to an involuntary conversion shall be removed from

the net income of each member of a combined group and shall be included in the combined group's net income as follows:

(A) For each class of gain or loss, whether short-term capital, long-term capital, Section 1231 of the Internal Revenue Code gain or loss, and gain or loss from involuntary conversions, all member's business gain and loss for the class shall be combined, without netting between such classes, and each class of net business gain or loss shall be apportioned to each member under subsection (b) of this section.

(B) Any resulting income or loss apportioned to this state, as long as the loss is not subject to the limitations of Section 1211 of the Internal Revenue Code, of a taxable member produced by the application of subparagraph (A) of this subdivision shall then be applied to all other income or loss of that member apportioned to this state. Any resulting loss of a member apportioned to this state that is subject to the limitations of said Section 1211 shall be carried forward by that member and shall be treated as short-term capital loss apportioned to this state and incurred by that member for the year for which the carryover applies.

(9) Any expense of any member of the combined group that is directly or indirectly attributable to the income of any member of the combined group, which income this state is prohibited from taxing pursuant to the laws or Constitution of the United States, shall be disallowed as a deduction for purposes of determining the combined group's net income.

(b) A taxable member of a combined group shall determine its apportionment percentage as follows:

(1) Each taxable member shall determine its apportionment percentage based on the otherwise applicable apportionment formula provided in chapter 208 of the general statutes. In computing its denominators for all factors, the taxable member shall use the combined group's denominator for that factor, as provided in subdivision (2) of this subsection. In computing the numerator of its

receipts factor, each taxable member shall add to such numerator its share of receipts of nontaxable members assignable to this state, as provided in subdivision (3) of this subsection.

(2) The combined group shall determine its property and payroll factor denominators using the factors from all members, whether or not a member would otherwise apportion its income using such property and payroll factors.

(3) Receipts assignable to this state of each nontaxable member shall be determined based upon the apportionment formula that would be applicable to such member if it were a taxable member and shall be aggregated. Each taxable member of the combined group shall include in the numerator of its receipts factor a portion of the aggregate receipts assignable to this state of nontaxable members based on a ratio, the numerator of which is such taxable member's receipts assignable to this state, without regard to this subsection, and the denominator of which is the aggregate receipts assignable to this state of all the taxable members of the combined group, without regard to this subsection.

(4) In determining the numerator and denominator of the apportionment factors of taxable members, transactions between or among members of such combined group shall be eliminated.

(5) If any member of a combined group required to file a combined unitary tax return pursuant to section 12-222 of the general statutes, as amended by this act, is taxable both within and without this state, every taxable member shall be entitled to apportion its net income in accordance with this section.

(c) To calculate each taxable member's net income or loss apportioned to this state, each taxable member shall apply its apportionment percentage, as determined pursuant to subsection (b) of this section, to the combined group's net income.

(d) After calculating its net income or loss apportioned to this state,

pursuant to subsection (c) of this section, each taxable member of a combined group required to file a combined unitary tax return pursuant to section 12-222 of the general statutes, as amended by this act, may deduct a net operating loss from its net income apportioned to this state as follows:

(1) For income years beginning on or after January 1, 2010, if the computation of a combined group's net income results in a net operating loss, a taxable member of such group may carry over its net income apportioned to this state, as calculated under subsection (c) of this section, derived from the unitary business in a future income year to the extent that the carryover and deduction is otherwise consistent with subparagraph (A) of subdivision (4) of subsection (a) of section 12-217 of the general statutes, as amended by this act. Any taxable member that has more than one operating loss carryover shall apply the carryovers in the order that the operating loss was incurred, with the oldest carryover to be deducted first.

(2) Where a taxable member of a combined group has an operating loss carryover derived from a loss incurred by a combined group in an income year beginning on or after January 1, 2010, then the taxable member may share the operating loss carryover with other taxable members of the combined group if such other taxable members were taxable members of the combined group in the income year that the loss was incurred. Any amount of operating loss carryover that is deducted by another taxable member of the combined group shall reduce the amount of operating loss carryover that may be carried over by the taxable member that originally incurred the loss.

(3) Where a taxable member of a combined group has an operating loss carryover derived from a loss incurred in an income year beginning prior to January 1, 2010, or derived from an income year during which the taxable member was not a member of such combined group, the carryover shall remain available to be deducted by that taxable member. Such carryover shall be deductible only by the taxable member that incurred the loss and shall not be deductible by any other

members of the combined group.

(e) Each taxable member shall multiply its income or loss apportioned to this state, as calculated under subsection (c) of this section and as further modified by subsection (d) of this section, by the tax rate set forth in section 12-214 of the general statutes, as amended by this act.

(f) The additional tax base of taxable and nontaxable members of a combined group required to file a combined unitary tax return pursuant to section 12-222 of the general statutes, as amended by this act, shall be calculated as follows:

(1) Except as otherwise provided in subdivision (2) of this subsection, members of the combined group shall calculate the combined group's additional tax base by aggregating their separate additional tax bases under subsection (a) of section 12-219 of the general statutes, as amended by this act, provided intercorporate stockholdings in the combined group shall be eliminated and provided no deduction shall be allowed under subparagraph (B)(ii) of subdivision (1) of subsection (a) of section 12-219 of the general statutes, as amended by this act, for such intercorporate stockholdings. In calculating the combined group's additional tax base, the separate additional tax bases of nontaxable members shall be included, as if those nontaxable members were taxable members. The amount calculated under this subdivision shall be apportioned to those members pursuant to subdivision (1) of subsection (g) of this section.

(2) Members of the combined group that are financial service companies, as defined in section 12-218b of the general statutes, as amended by this act, shall calculate their additional tax liability under subsection (d) of section 12-219 of the general statutes, as amended by this act, and not pursuant to subdivision (1) of this subsection.

(g) A taxable member of a combined group required to file a combined unitary tax return pursuant to section 12-222 of the general statutes, as amended by this act, shall determine its apportionment

percentage under section 12-219a of the general statutes, as amended by this act, as follows:

(1) A taxable member whose separate additional tax base is included in the calculation of the combined group's additional tax base under subdivision (1) of subsection (f) of this section shall apportion the combined group's additional tax base using the otherwise applicable apportionment formula provided in section 12-219a of the general statutes, as amended by this act. However, the denominator of such apportionment fraction shall be the sum of subdivisions (1) and (2) of subsection (a) of said section 12-219a for all taxable members whose separate additional tax bases are included in the calculation of the combined group's additional tax base under subdivision (1) of subsection (f) of this section. The numerator of such apportionment fraction shall be the sum of subparagraph (A) of subdivision (1) of subsection (a) of said section 12-219a and subparagraph (A) of subdivision (2) of subsection (a) of said section 12-219a for such taxable member.

(2) Members of the combined group that are financial service companies, as defined in section 12-218b of the general statutes, as amended by this act, shall each have an additional tax liability as described in subdivision (2) of subsection (h) of this section.

(h) (1) A taxable member whose separate additional tax base is included in the calculation of the combined group's additional tax base under subdivision (1) of subsection (f) of this section shall multiply the combined group's additional tax base, as calculated under subdivision (1) of subsection (f) of this section, by such member's apportionment fraction determined in subdivision (1) of subsection (g) of this section, by the tax rate set forth in subsection (a) of section 12-219 of the general statutes, as amended by this act. In no event shall a tax credit allowed against the tax imposed by chapter 208 of the general statutes reduce a taxable member's tax calculated under this subsection to an amount less than two hundred fifty dollars.

(2) Members of the combined group that are financial service

companies, as defined in section 12-218b of the general statutes, as amended by this act, shall each have an additional tax liability of two hundred fifty dollars. In no event shall a tax credit allowed against the tax imposed by chapter 208 of the general statutes reduce a financial service company's tax calculated under this subsection to an amount less than two hundred fifty dollars.

(i) Each taxable member of a combined group required to file a combined unitary tax return pursuant to section 12-222 of the general statutes, as amended by this act, shall separately apply the provisions of sections 12-217ee and 12-217zz of the general statutes in determining the amount of tax credit available to such member.

Sec. 2. (NEW) (*Effective from passage and applicable to income years commencing on or after January 1, 2010*) (a) Upon election by the designated taxable member of a combined group, the combined group's net income, additional tax base and the apportionment factors of each taxable member shall be determined on a world-wide basis. If no such election is made, the combined group's net income, additional tax base and the apportionment factors of each taxable member shall be determined on a water's-edge basis, whereby a nontaxable member's income, additional tax base and attributes that affect each taxable member's apportionment factors shall be included only if the nontaxable member is described in any one or more of the following categories:

(1) Any member incorporated in the United States, or formed under the laws of the United States, any state, the District of Columbia, or any territory or possession of the United States; or

(2) Any member that earns more than twenty per cent of its income, directly or indirectly, from intangible property or service-related activities, the costs of which generally are deductible for federal income tax purposes, whether currently or over a period of time, against the income of other members of the group, but only to the extent of that income and the apportionment factors related thereto.

(b) A world-wide election is effective only if made on a timely-filed, original return for an income year by the designated taxable member of the combined group. Such election is binding for, and applicable to, the income year for which it is made and for the ten immediately succeeding income years.

Sec. 3. Subsection (a) of section 12-213 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to income years commencing on or after January 1, 2010*):

(a) When used in this **[**part**]** chapter and in sections 1 and 2 of this act, unless the context otherwise requires:

(1) "Taxpayer" and "company" mean any corporation, foreign municipal electric utility, as defined in section 12-59, electric distribution company, as defined in section 16-1, electric supplier, as defined in section 16-1, generation entity or affiliate, as defined in section 16-1, joint stock company or association or any fiduciary thereof and any dissolved corporation which continues to conduct business but does not include a passive investment company or municipal utility, as defined in section 12-265;

(2) "Dissolved corporation" means any company which has terminated its corporate existence by resolution, expiration, decree or forfeiture;

(3) "Commissioner of Revenue Services" or "commissioner" means the Commissioner of Revenue Services;

(4) "Tax year" means the calendar year in which the tax is payable;

(5) "Income year" means the calendar year upon the basis of which net income is computed under this part, unless a fiscal year other than the calendar year has been established for federal income tax purposes, in which case it means the fiscal year so established or a period of less than twelve months ending as of the date on which liability under this chapter ceases to accrue by reason of dissolution, forfeiture,

withdrawal, merger or consolidation;

(6) "Fiscal year" means the income year ending on the last day of any month other than December or an annual period which varies from fifty-two to fifty-three weeks elected by the taxpayer in accordance with the provisions of the Internal Revenue Code;

(7) "Paid" means "paid or accrued" or "paid or incurred", construed according to the method of accounting upon the basis of which net income is computed under this part;

(8) "Received" means "received" or "accrued", construed according to the method of accounting upon the basis of which net income is computed under this part;

(9) (A) "Gross income" means gross income, as defined in the Internal Revenue Code, and, in addition, means any interest or exempt interest dividends, as defined in Section 852(b)(5) of the Internal Revenue Code, received by the taxpayer or losses of other calendar or fiscal years, retroactive to include all calendar or fiscal years beginning after January 1, 1935, incurred by the taxpayer which are excluded from gross income for purposes of assessing the federal corporation net income tax, and in addition, notwithstanding any other provision of law, means interest or exempt interest dividends, as defined in said Section 852(b)(5) of the Internal Revenue Code, accrued on or after the application date, as defined in section 12-242ff, with respect to any obligation issued by or on behalf of the state, its agencies, authorities, commissions and other instrumentalities, or by or on behalf of its political subdivisions and their agencies, authorities, commissions and other instrumentalities;

(B) "Gross income" shall not include the amount which for federal income tax purposes is treated as a dividend received by a domestic United States corporation from a foreign corporation on account of foreign taxes deemed paid by such domestic corporation, when such domestic corporation elects the foreign tax credit for federal income tax purposes;

(C) "Gross income" shall not include any amount which for federal income tax purposes is treated as a dividend received directly or indirectly by a taxpayer from a passive investment company;

(10) "Net income" means net earnings received during the income year and available for contributors of capital, whether they are creditors or stockholders, computed by subtracting from gross income the deductions allowed by the terms of section 12-217, as amended by this act, except that in the case of a domestic insurance company which is a life insurance company "net income" means life insurance company taxable income (A) increased by any amount or amounts which have been deducted in the computation of gain or loss from operations in respect of (i) the life insurance company's share of tax-exempt interest, (ii) operations loss carry-backs and capital loss carry-backs and (iii) operations loss carry-overs and capital loss carry-overs arising in any taxable year commencing prior to January 1, 1973, and (B) reduced by any amount or amounts which have been deducted as operations loss carry-backs or capital loss carry-backs in the computation of gain or loss from operations for any taxable year commencing on or after January 1, 1973, but only to the extent that such amount or amounts, would, for federal tax purposes, have been deductible in the taxable year as operations loss carry-overs or capital loss carry-overs if they had not been deducted in a previous taxable year as carry-backs and provided no expense related to income, the taxation of which by the state of Connecticut is prohibited by the law or Constitution of the United States, as applied, or by the law or Constitution of this state, as applied, shall be deducted under this chapter and provided further no item may, directly or indirectly be excluded or deducted more than once;

(11) "Life insurance company" has the same meaning as it has under the Internal Revenue Code;

(12) "Life insurance company taxable income" has the same meaning as it has under the Internal Revenue Code;

(13) "Life insurance company's share" has the same meaning as it

has under the Internal Revenue Code;

(14) "Operations loss carry-over", with respect to a life insurance company, has the same meaning as it has under the Internal Revenue Code;

(15) "Operations loss carry-back", with respect to a life insurance company, has the same meaning as it has under the Internal Revenue Code;

(16) "Capital loss carry-over", with respect to a life insurance company, has the same meaning as it has under the Internal Revenue Code;

(17) "Capital loss carry-back", with respect to a life insurance company, has the same meaning as it has under the Internal Revenue Code;

(18) "Gain or loss from operations", with respect to a life insurance company, has the same meaning as it has under the Internal Revenue Code;

(19) "Fiduciary" means any receiver, liquidator, referee, trustee, assignee or other fiduciary or officer or agent appointed by any court or by any other authority, except the Banking Commissioner acting as receiver or liquidator under the authority of the provisions of sections 36a-210 and 36a-218 to 36a-239, inclusive;

(20) (A) "Carrying on or doing business" means and includes each and every act, power or privilege exercised or enjoyed in this state, as an incident to, or by virtue of, the powers and privileges acquired by the nature of any organization whether the form of existence is corporate, associate, joint stock company or fiduciary, and includes the direct or indirect engaging in, transacting or conducting of activity in this state by an electric supplier, as defined in section 16-1, or generation entity or affiliate, as defined in section 16-1, for the purpose of establishing or maintaining a market for the sale of electricity or of electric generation services, as defined in section 16-1, to end use

customers located in this state through the use of the transmission or distribution facilities of an electric distribution company, as defined in section 16-1, or, until unbundled in accordance with section 16-244e, electric company, as defined in section 16-1;

(B) A company that has contracted with a commercial printer for printing and distribution of printed material shall not be deemed to be carrying on or doing business in this state because of (i) the ownership or leasing by that company of tangible or intangible personal property located at the premises of the commercial printer in this state, (ii) the sale by that company of property of any kind produced or processed at and shipped or distributed from the premises of the commercial printer in this state, (iii) the activities of that company's employees or agents at the premises of the commercial printer in this state, which activities relate to quality control, distribution or printing services performed by the printer, or (iv) the activities of any kind performed by the commercial printer in this state for or on behalf of that company;

(C) A company that participates in a trade show or shows at the convention center, as defined in subdivision (3) of section 32-600, shall not be deemed to be carrying on or doing business in this state, regardless of whether the company has employees or other staff present at such trade shows, provided such company's activity at such trade shows is limited to displaying goods or promoting services, no sales are made, any orders received are sent outside this state for acceptance or rejection and are filled from outside this state, and provided further that such participation is not more than fourteen days, or part thereof, in the aggregate during the company's income year for federal income tax purposes;

(21) "Alternative energy system" means design systems, equipment or materials which utilize as their energy source solar, wind, water or biomass energy in providing space heating or cooling, water heating or generation of electricity, but shall not include wood-burning stoves;

(22) "S corporation" means any corporation which is an S

corporation for federal income tax purposes and includes any subsidiary of such S corporation that is a qualified subchapter S subsidiary, as defined in Section 1361(b)(3)(B) of the Internal Revenue Code, all of whose assets, liabilities and items of income, deduction and credit are treated under the Internal Revenue Code, and shall be treated under this chapter, as assets, liabilities and such items, as the case may be, of such S corporation;

(23) "Internal Revenue Code" means the Internal Revenue Code of 1986, or any subsequent internal revenue code of the United States, as from time to time amended, effective and in force on the last day of the income year;

(24) "Partnership" means a partnership, as defined in the Internal Revenue Code, and includes a limited liability company that is treated as a partnership for federal income tax purposes;

(25) "Partner" means a partner, as defined in the Internal Revenue Code, and includes a member of a limited liability company that is treated as a partnership for federal income tax purposes;

(26) "Investment partnership" means a limited partnership that meets the gross income requirement of Section 851(b)(2) of the Internal Revenue Code, except that income and gains from commodities that are not described in Section 1221(1) of the Internal Revenue Code or from futures, forwards and options with respect to such commodities shall be included in income which qualifies to meet such gross income requirement, provided such commodities are of a kind customarily dealt with in an organized commodity exchange and the transaction is of a kind customarily consummated at such place, as required by Section 864(b)(2)(B)(iii) of the Internal Revenue Code. To the extent that such a partnership has income and gains from commodities that are not described in Section 1221(1) of the Internal Revenue Code or from futures, forwards and options with respect to such commodities, such income and gains must be derived by a partnership which is not a dealer in commodities and is trading for its own account as described in Section 864(b)(2)(B)(ii) of the Internal Revenue Code. The term

"investment partnership" does not include a dealer, within the meaning of Section 1236 of the Internal Revenue Code, in stocks or securities;

(27) "Passive investment company" means any corporation which is a related person to a financial service company, as defined in section 12-218b, as amended by this act, or to an insurance company, as defined in section 12-218b, as amended by this act, and (A) employs not less than five full-time equivalent employees in the state; (B) maintains an office in the state; and (C) confines its activities to the purchase, receipt, maintenance, management and sale of its intangible investments, and the collection and distribution of the income from such investments, including, but not limited to, interest and gains from the sale, transfer or assignment of such investments or from the foreclosure upon or sale, transfer or assignment of the collateral securing such investments. For purposes of this subdivision, "intangible investments" shall be limited to loans secured by real property, as defined in section 12-218b, as amended by this act, including a line of credit which is a loan secured by real property and which permits future advances by the passive investment company; the collateral or an interest in the collateral that secured such loans if the sale of such collateral or interest is actively marketed by or on behalf of the passive investment company; and any short-term investment of cash held by the passive investment company which cash is reasonably necessary for the operations of such passive investment company; **[**.**]**

(28) "Combined group" means the group of all persons that have common ownership and are engaged in a unitary business, where at least one person is subject to tax under this chapter;

(29) "Combined group's net income" means the amount calculated under subsection (a) of section 1 of this act;

(30) "Common ownership" means that not less than fifty per cent of the voting control of each member of a combined group is directly or indirectly owned by a common owner or owners, either corporate or

noncorporate, whether or not the owner or owners are members of the combined group. Whether voting control is indirectly owned shall be determined in accordance with Section 318 of the Internal Revenue Code;

(31) "Unitary business" means a single economic enterprise that is made up either of separate parts of a single business entity or of a group of business entities under common ownership, which enterprise is sufficiently interdependent, integrated or interrelated through its activities so as to provide mutual benefit and produce a significant sharing or exchange of value among such entities, or a significant flow of value among the separate parts. For purposes of this chapter, (A) any business conducted by a pass-through entity shall be treated as conducted by its members, whether directly held or indirectly held through a series of pass-through entities, to the extent of the member's distributive share of the pass-through entity's income, regardless of the percentage of the member's ownership interest or its distributive or any other share of pass-through entity income, and (B) a business conducted directly or indirectly by one corporation is unitary with that portion of a business conducted by another corporation through its direct or indirect interest in a pass-through entity if there is a mutual benefit and a significant sharing of exchange or flow of value between the two parts of the business and the two corporations are members of the same group of business entities under common ownership;

(32) "Designated taxable member" means, if the combined group has a common parent corporation and that common parent corporation is a taxable member, the common parent corporation and, in all other cases, the taxable member of the combined group that such group selects, in the manner prescribed by section 12-222, as amended by this act, as its designated taxable member or, in the discretion of the commissioner or upon the failure of such group to select its designated taxable member in the manner prescribed by section 12-222, as amended by this act, the taxable member of the combined group selected by the commissioner as the designated taxable member;

(33) "Group income year" means, if two or more members in the combined group file in the same federal consolidated tax return, the same income year as that used on the federal consolidated tax return and, in all other cases, the income year of the designated taxable member;

(34) "Nontaxable member" means a combined group member that is not a taxable member;

(35) "Person" means person, as defined in section 12-1;

(36) "Taxable member" means a combined group member that is subject to tax pursuant to this chapter;

(37) "Pass-through entity" means a partnership or an S corporation.

Sec. 4. Section 12-214 of the 2010 supplement to the general statutes is amended by adding subsection (c) as follows (*Effective from passage and applicable to income years commencing on or after January 1, 2010*):

(NEW) (c) Each taxable member of a combined group required to file a combined unitary tax return pursuant to section 12-222, as amended by this act, shall calculate such member's tax under subsection (a) of this section, by multiplying such member's net income apportioned to this state, as provided in subsection (c) of section 1 of this act, by the tax rate set forth in this section.

Sec. 5. Section 12-217 of the 2010 supplement to the general statutes is amended by adding subsections (e) and (f) as follows (*Effective from passage and applicable to income years commencing on or after January 1, 2010*):

(NEW) (e) Where a combined group is required to file a combined unitary tax return pursuant to section 12-222, as amended by this act, the combined group's net income shall be computed as provided in subsection (a) of section 1 of this act.

(NEW) (f) Where a combined group is required to file a combined

unitary tax return pursuant to section 12-222, as amended by this act, a taxable member's net operating loss apportioned to this state shall be deducted and carried over by the taxable member as provided in subsection (d) of section 1 of this act.

Sec. 6. Subsection (b) of section 12-217n of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to income years commencing on or after January 1, 2010*):

(b) For purposes of this section:

(1) "Research and development expenses" means research or experimental expenditures deductible under Section 174 of the Internal Revenue Code of 1986, as in effect on May 28, 1993, determined without regard to Section 280C(c) thereof or any elections made by a taxpayer to amortize such expenses on its federal income tax return that were otherwise deductible, and basic research payments as defined under Section 41 of said Internal Revenue Code to the extent not deducted under said Section 174, provided: (A) Such expenditures and payments are paid or incurred for such research and experimentation and basic research conducted in this state; and (B) such expenditures and payments are not funded, within the meaning of Section 41(d)(4)(H) of said Internal Revenue Code, by any grant, contract, or otherwise by a person or governmental entity other than the taxpayer unless such other person is included in a combined return with the person paying or incurring such expenses;

(2) "Combined return" shall mean a combined **[**corporation business tax return under section 12-223a**]** unitary tax return under section 12-222, as amended by this act;

(3) "Commissioner" means the Commissioner of Economic and Community Development;

(4) "Qualified small business" means a company that (A) has gross income for the previous income year that does not exceed one hundred

million dollars, and (B) has not, in the determination of the commissioner, met the gross income test through transactions with a related person, as defined in section 12-217w.

Sec. 7. Subsection (e) of section 12-217t of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to income years commencing on or after January 1, 2010*):

(e) In the case of taxpayers filing a combined unitary tax return pursuant to section **[**12-223a**]** 12-222, as amended by this act, the credit provided by this section shall be allowed on a combined basis, such that the amount of personal property taxes paid by such taxpayers with respect to such equipment may be claimed as a tax credit against the combined unitary tax liability of such taxpayers as determined under this chapter. Credits available to taxpayers which are subject to tax under this chapter but not subject to tax under chapter 207, 208a, 209, 210, 211 or 212 or the tax imposed on health care centers under the provisions of section 12-202a shall be used prior to credits of companies included in such combined return which are also subject to tax under said chapter 207, 208a, 209, 210, 211 or 212 or the tax imposed upon health centers pursuant to the provisions of section 12-202a.

Sec. 8. Subsection (l) of section 12-217u of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to income years commencing on or after January 1, 2010*):

(l) (1) In the case of a financial institution included in a combined unitary tax return under section **[**12-223a**]** 12-222, as amended by this act, a credit allowed under subsection (b) or (f) of this section may be taken against the tax of the combined unitary group. (2) The credit allowed to a financial institution under subsection (b) or (f) of this section may be taken by any corporation which is eligible to elect to file a combined unitary return with a group with which the financial institution is eligible to file a combined unitary return, provided the

aggregate credit taken by all such corporations in any income year shall not exceed the aggregate credit for which such group would have been eligible if it had filed a combined unitary return.

Sec. 9. Subsection (c) of section 12-217gg of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to income years commencing on or after January 1, 2010*):

(c) (1) For the purposes of this chapter, each constituent corporation shall be deemed to have itself conducted its pro rata share of the business conducted by the sponsor.

(2) The pro rata share of the business conducted by the sponsor that shall be deemed to have been conducted by each constituent corporation shall be the same percentage as such constituent corporation's distributive share of the profit or loss of the sponsor for any relevant income year.

(3) The limitation of section 12-217zz shall be applied on the return of each constituent corporation or on the combined unitary return filed by two or more constituent corporations.

Sec. 10. Subsection (h) of section 12-217gg of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to income years commencing on or after January 1, 2010*):

(h) The credits allowed under this section may be used by constituent corporations joining in a combined **[**corporation business**]** unitary tax return under section **[**12-223a**]** 12-222, as amended by this act.

Sec. 11. Section 12-218 of the general statutes is amended by adding subsection (m) as follows (*Effective from passage and applicable to income years commencing on or after January 1, 2010*):

(NEW) (m) Each taxable member of a combined group required to

file a combined unitary tax return pursuant to section 12-222, as amended by this act, shall, if one or more members of such group are taxable both within and without this state, apportion its net income as provided in subsections (b) and (c) of section 1 of this act.

Sec. 12. Section 12-218b of the general statutes is amended by adding subsection (m) as follows (*Effective from passage and applicable to income years commencing on or after January 1, 2010*):

(NEW) (m) Each financial service company that is a member of a combined group required to file a combined unitary tax return pursuant to section 12-222, as amended by this act, shall apportion its net income as provided in subsections (b) and (c) of section 1 of this act.

Sec. 13. Subsection (c) of section 12-218c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to income years commencing on or after January 1, 2010*):

(c) (1) The adjustments required in subsection (b) of this section shall not apply if the corporation establishes by clear and convincing evidence that the adjustments are unreasonable, or the corporation and the Commissioner of Revenue Services agree in writing to the application or use of an alternative method of apportionment under section 12-221a, as amended by this act. Nothing in this subdivision shall be construed to limit or negate the commissioner's authority to otherwise enter into agreements and compromises otherwise allowed by law.

(2) The adjustments required in subsection (b) of this section shall not apply to such portion of interest expenses and costs and intangible expenses and costs that the corporation can establish by the preponderance of the evidence meets both of the following: (A) The related member during the same income year directly or indirectly paid, accrued or incurred such portion to a person who is not a related member, and (B) the transaction giving rise to the interest expenses

and costs or the intangible expenses and costs between the corporation and the related member did not have as a principal purpose the avoidance of any portion of the tax due under this chapter.

(3) The adjustments required in subsection (b) of this section shall apply except to the extent that increased tax, if any, attributable to such adjustments would have been avoided if both the corporation and the related member had been eligible to make and had timely made the election to file a combined return under subsection (a) of section 12-223a, as amended by this act.

(4) The adjustments required in subsection (b) of this section shall apply except to the extent that the corporation and the related member are both members of a combined group required to file a combined unitary tax return pursuant to section 12-222, as amended by this act.

Sec. 14. Subsection (d) of section 12-218d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to income years commencing on or after January 1, 2010*):

(d) The adjustments required in subsection (b) of this section shall not apply **[**if**]** in any of the following circumstances:

(1) **[**the**]** The corporation establishes by clear and convincing evidence, as determined by the commissioner, that the adjustments are unreasonable. **[**,**]**

(2) **[**the**]** The corporation and the commissioner agree in writing to the application or use an alternative method of determining the combined measure of the tax, provided that the Commissioner of Revenue Services shall consider approval of such petition only in the event that the petitioners have clearly established to the satisfaction of said commissioner that there are substantial intercorporate business transactions among such included corporations and that the proposed alternative method of determining the combined measure of the tax accurately reflects the activity, business, income or capital of the

taxpayers within the state. **[**, or**]**

(3) **[**the**]** The corporation elects, on forms authorized for such purpose by the commissioner, to calculate its tax on a unitary basis including all members of the unitary group provided that there are substantial intercorporate business transactions among such included corporations. Such election to file on a unitary basis shall be irrevocable for and applicable for five successive income years, but shall not be applicable to income years commencing on or after January 1, 2010. Nothing in this subdivision shall be construed to limit or negate the commissioner's authority to otherwise enter into agreements and compromises otherwise allowed by law.

(4) The corporation and the related member are both members of a combined group required to file a combined unitary tax return pursuant to section 12-222, as amended by this act.

Sec. 15. Section 12-219 of the 2010 supplement to the general statutes is amended by adding subsection (e) as follows (*Effective from passage and applicable to income years commencing on or after January 1, 2010*):

(NEW) (e) The additional tax base of taxable and nontaxable members of a combined group required to file a combined unitary tax return pursuant to section 12-222, as amended by this act, shall be calculated as provided in subsection (f) of section 1 of this act.

Sec. 16. Section 12-219a of the general statutes is amended by adding subsection (d) as follows (*Effective from passage and applicable to income years commencing on or after January 1, 2010*):

(NEW) (d) The additional tax base of taxable and nontaxable members of a combined group required to file a combined unitary tax return pursuant to section 12-222, as amended by this act, shall be apportioned as provided in subsection (g) of section 1 of this act.

Sec. 17. Section 12-221a of the general statutes is amended by adding subsection (c) as follows (*Effective from passage and applicable to income years commencing on or after January 1, 2010*):

(NEW) (c) The provisions of this section shall also apply to a combined group required to file a combined unitary tax return pursuant to section 12-222, as amended by this act.

Sec. 18. Section 12-222 of the general statutes is amended by adding subsection (g) as follows (*Effective from passage and applicable to income years commencing on or after January 1, 2010*):

(NEW) (g) (1) A combined group shall file a combined unitary tax return under this chapter in the form and manner prescribed by the Commissioner of Revenue Services. The designated taxable member of a combined group shall file the combined unitary tax return on behalf of the taxable members of the combined group and shall pay the tax on behalf of such taxable members. A designated taxable member shall not be liable to, and shall be entitled to recover a payment made pursuant to this subdivision from, the taxable member on whose behalf the payment was made.

(2) If a member of a combined group has a different income year than the group income year, such member with a different income year shall report amounts from its return for its income year that ends during the group income year, provided no such reporting of amounts shall be required of such member until its first income year beginning on or after January 1, 2010.

(3) Notwithstanding the provisions of subdivision (1) of this subsection, each taxable member of a combined group is jointly and severally liable for the tax due from any taxable member under this chapter, whether or not such tax has been self-assessed, and for any interest, penalties or additions to tax due from any taxable member under this chapter.

(4) In all cases where a combined group is eligible to select the designated taxable member of the combined group, notice of the selection shall be submitted in written form to the commissioner not later than the due date, or, if an extension of time to file has been requested and granted, the extended due date of the combined unitary

tax return for the initial income year that such a return is required. The subsequent selection of another designated taxable member shall be subject to the approval of the commissioner.

(5) For purposes of this chapter, the designated taxable member is authorized to do the following acts on behalf of taxable and nontaxable members of the combined group, including, but not limited to: (A) Signing the combined unitary tax return, including any amendments thereto; (B) applying for extensions of time to file the return; (C) before the expiration of the time prescribed in section 12-233 for the examination of the return or the assessment of tax, consenting to an examination or assessment after such time and prior to the expiration of the period agreed upon; (D) making offers of compromise under section 12-2d; (E) entering into closing agreements under section 12-2e; and (F) receiving a refund or credit of a tax overpayment under this chapter.

(6) For purposes of this chapter, the commissioner may, at the commissioner's sole discretion: (A) Send any notice to either the designated taxable member or a taxable member or members of the combined group; (B) make any deficiency assessment against either the designated taxable member or a taxable member or members of the combined group; (C) refund or credit any overpayment to either the designated taxable member or a taxable member or members of the combined group; (D) require any payment to be made by electronic funds transfer; and (E) require the combined unitary tax return to be electronically filed.

Sec. 19. Section 12-223a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to income years commencing on or after January 1, 2010*):

(a) **[**Any**]** Subject to the provisions of subsection (e) of this section, any taxpayer included in a consolidated return with one or more other corporations for federal income tax purposes may elect to file a combined return under this chapter together with such other companies subject to the tax imposed thereunder as are included in the

federal consolidated corporation income tax return and such combined return shall be filed in such form and setting forth such information as the Commissioner of Revenue Services may require. Notice of an election made pursuant to the provisions of this subsection and consent to such election must be submitted in written form to the Commissioner of Revenue Services by each corporation so electing not later than the due date, or if an extension of time to file has been requested and granted, the extended due date of the returns due from the electing corporations for the initial income year for which the election to file a combined return is made. Such election shall be in effect for such initial income year and for each succeeding income years unless and until such election is revoked in accordance with the provisions of subsection (d) of this section.

(b) **[**Any**]** Subject to the provisions of subsection (e) of this section, any taxpayer, other than a corporation filing a combined return with one or more other corporations under subsection (a) of this section, which owns or controls either directly or indirectly substantially all the capital stock of one or more corporations, or substantially all the capital stock of which is owned or controlled either directly or indirectly by one or more other corporations or by interests which own or control either directly or indirectly substantially all the capital stock of one or more other corporations, may, in the discretion of the Commissioner of Revenue Services, be required or permitted by written approval of the Commissioner of Revenue Services to make a return on a combined basis covering any such other corporations and setting forth such information as the Commissioner of Revenue Services may require, provided no combined return covering any corporation not subject to tax under this chapter shall be required unless the Commissioner of Revenue Services deems such a return necessary, because of intercompany transactions or some agreement, understanding, arrangement or transaction referred to in section 12-226a, in order properly to reflect the tax liability under this part.

(c) (1) (A) In the case of a combined return, the tax shall be measured by the sum of the separate net income or loss of each

corporation included or the minimum tax base of the included corporations but only to the extent that said income, loss or minimum tax base of any included corporation is separately apportioned to Connecticut in accordance with the provisions of section 12-218, 12-218b, 12-219a or 12-244, whichever is applicable. In computing said net income or loss, intercorporate dividends shall be eliminated, and in computing the combined additional tax base, intercorporate stockholdings shall be eliminated.

(B) In computing said net income or loss, any intangible expenses and costs, as defined in section 12-218c, any interest expenses and costs, as defined in section 12-218c, and any income attributable to such intangible expenses and costs or to such interest expenses and costs shall be eliminated, provided the corporation that is required to make adjustments under section 12-218c for such intangible expenses and costs or for such interest expenses and costs, and the related member or members, as defined in section 12-218c, are included in such combined return. If any such income and any such expenses and costs are eliminated as provided in this subparagraph, the intangible property, as defined in section 12-218c, of the corporation eliminating such income shall not be taken into account in apportioning under the provisions of section 12-219a the tax calculated under subsection (a) of section 12-219 of such corporation.

(2) If the method of determining the combined measure of such tax in accordance with this subsection for two or more affiliated companies validly electing to file a combined return under the provisions of subsection (a) of this section is deemed by such companies to unfairly attribute an undue proportion of their total income or minimum tax base to this state, said companies may submit a petition in writing to the Commissioner of Revenue Services for approval of an alternate method of determining the combined measure of their tax not later than sixty days prior to the due date of the combined return to which the petition applies, determined with regard to any extension of time for filing such return, and said commissioner shall grant or deny such approval before said due date. In deciding

whether or not the companies included in such combined return should be granted approval to employ the alternate method proposed in such petition, the Commissioner of Revenue Services shall consider approval only in the event that the petitioners have clearly established to the satisfaction of said commissioner that all the companies included in such combined return are, in substance, parts of a unitary business engaged in a single business enterprise and further that there are substantial intercorporate business transactions among such included companies.

(3) Upon the filing of a combined return under subsection (a) or (b) of this section, combined returns shall be filed for all succeeding income years or periods for those corporations reporting therein, provided, in the case of corporations filing under subsection (a) of this section, such corporations are included in a federal consolidated corporation income tax return filed for the succeeding income years and, in the case of a corporation filing under subsection (b) of this section, the aforesaid ownership or control continues in full force and effect and is not extended to other corporations, and further, provided no substantial change is made in the nature or locations of the operations of such corporations.

(d) Notwithstanding the provisions of subsections (a) and (c) of this section, any taxpayer which has elected to file a combined return under this chapter as provided in said subsection (a), may subsequently revoke its election to file a combined corporation business tax return and elect to file a separate corporation business tax return under this chapter, although continuing to be included in a federal consolidated corporation income tax return with other companies subject to tax under this chapter, provided such election shall not be effective before the fifth income year immediately following the initial income year in which the corporation elected to file a combined return under this chapter. Notice of an election made pursuant to the provisions of this subsection and consent to such election must be submitted in written form to the Commissioner of Revenue Services by each corporation that had been included in such

combined return not later than the due date, or if an extension of time to file has been requested and granted, extended due date of the separate returns due from the electing corporations for the initial income year for which the election to file separate returns is made. The election to file separate returns shall be irrevocable for and applicable for five successive income years.

(e) The provisions of this section shall not apply to income years commencing on or after January 1, 2010.

Sec. 20. Section 12-223b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to income years commencing on or after January 1, 2010*):

(a) Intercompany rents shall not be included in the computation of the value of property rented as a property factor in the apportionment fraction if the lessor and lessee are included in a combined return as provided in section 12-223a, as amended by this act.

(b) Intercompany business receipts, receipts by a corporation included in a combined return under section 12-223a, as amended by this act, from any other corporation included in such return, shall not be included in the computation of the receipts factor of the apportionment fraction.

Sec. 21. Section 12-223c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to income years commencing on or after January 1, 2010*):

Each corporation included in a combined return under section 12-223a, as amended by this act, shall pay the minimum tax of two hundred fifty dollars prescribed under section 12-219, as amended by this act. No tax credit allowed against the tax imposed by this chapter shall reduce an included corporation's tax calculated under section 12-219, as amended by this act, to an amount less than two hundred fifty dollars.

Sec. 22. Section 12-223e of the general statutes is repealed and the

following is substituted in lieu thereof (*Effective from passage and applicable to income years commencing on or after January 1, 2010*):

If revision shall be made of a combined return under section 12-223a, as amended by this act, for the purpose of the tax of two or more corporations, or of an assessment based upon such a return, the Commissioner of Revenue Services shall have power to readjust the taxes of each taxpayer included in such return, or, if revision is made of a return or an assessment against a taxpayer which might have been included in a combined return when the tax was originally reported or assessed, the Commissioner of Revenue Services shall have power to resettle the tax against such taxpayer and any other taxpayers which might have been included in such report upon a combined basis, and shall adjust the taxes of each such taxpayer accordingly.

Sec. 23. Section 12-223f of the 2010 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to income years commencing on or after January 1, 2010*):

(a) Notwithstanding the provisions of sections 12-223a to 12-223e, inclusive, as amended by this act, the tax due in relation to any corporations which have filed a combined return for any income year with other corporations for the tax imposed under this chapter in accordance with section 12-223a, as amended by this act, shall be determined as follows: (1) The tax which would be due from each such corporation if it were filing separately under this chapter shall be determined, and the total for all corporations included in the combined return shall be added together; (2) the tax which would be jointly due from all corporations included in the combined return in accordance with the provisions of said sections 12-223a to 12-223e, inclusive, as amended by this act, shall be determined; and (3) the total determined pursuant to subdivision (2) of this section shall be subtracted from the amount determined pursuant to subdivision (1) of this section. The resulting amount, in an amount not to exceed five hundred thousand dollars, shall be added to the amount determined to be due pursuant

to said sections 12-223a to 12-223e, inclusive, as amended by this act, and shall be due and payable as a part of the tax imposed pursuant to this chapter.

(b) The provisions of this section shall not apply to income years commencing on or after January 1, 2010.

Sec. 24. Section 12-242d of the general statutes is amended by adding subsection (j) as follows (*Effective from passage and applicable to income years commencing on or after January 1, 2010*):

(NEW) (j) (1) The provisions of this section shall apply to taxable members of a combined group required to file a combined unitary tax return pursuant to section 12-222, as amended by this act, except as otherwise provided in subdivisions (3) and (4) of this subsection.

(2) The designated taxable member of a combined group shall be responsible for paying estimated tax installments, at the times and in the amounts specified in this section, on behalf of the taxable members of the combined group and in the form and manner prescribed by the Commissioner of Revenue Services.

(3) For combined groups whose 2010 group income year commences on January, February or March, the due date of the first required installment is extended to the due date of the second required installment. The due date for the first and second required installments of estimated tax for a combined group whose 2010 group income year commences on January shall be June 15, 2010, and the amount of the first and second required installments shall be seventy per cent of the required annual payment. The due date for the first and second required installments of estimated tax for a combined group whose 2010 group income year commences on February shall be July 15, 2010, and the amount of the first and second required installments shall be seventy per cent of the required annual payment. The due date for the first and second required installments of estimated tax for a combined group whose 2010 group income year commences on March shall be August 15, 2010, and the amount of the first and second required

installments shall be seventy per cent of the required annual payment.

(4) Notwithstanding the provisions of subsection (e) of this section, where the preceding income year, as the term is used in said subsection, is an income year commencing on or after January 1, 2009, but prior to January 1, 2010, the required annual payment of a combined group is the lesser of (A) ninety per cent of the tax shown on the combined unitary tax return for the group income year commencing on or after January 1, 2010, but prior to January 1, 2011, or, if no return is filed, ninety per cent of the tax for such year computed in accordance with section 1 of this act, or (B) (i) if such preceding income year was an income year of twelve months and if the taxable members filed separate returns for such preceding income year showing a liability for tax, the sum of one hundred per cent of the tax shown on each such return for such preceding income year of each such taxable member, without regard to any credit under chapter 208, or (ii) if the preceding income year was an income year of twelve months and if the taxable members filed a return pursuant to section 12-223a, as amended by this act, for such preceding income year showing a liability for tax, one hundred per cent of the tax shown on such return for such preceding income year, without regard to any credit under chapter 208.

Sec. 25. Subsection (k) of section 38a-88a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to income years commencing on or after January 1, 2010*):

(k) (1) The Commissioner of Revenue Services may treat one or more corporations that are properly included in a combined **[**corporation business**]** unitary tax return under section **[**12-223**]** 12-222, as amended by this act, as one taxpayer in determining whether the appropriate requirements under this section are met. Where corporations are treated as one taxpayer for purposes of this subsection, then the credit shall be allowed only against the amount of the combined unitary tax for all corporations properly included in a

combined unitary return that, under the provisions of subdivision (2) of this subsection, is attributable to the corporations treated as one taxpayer. (2) The amount of the combined unitary tax for all corporations properly included in a combined **[**corporation business**]** unitary tax return that is attributable to the corporations that are treated as one taxpayer under the provisions of this subsection shall be in the same ratio to such combined unitary tax that the net income apportioned to this state of each corporation treated as one taxpayer bears to the net income apportioned to this state, in the aggregate, of all corporations included in such combined unitary return. Solely for the purpose of computing such ratio, any net loss apportioned to this state by a corporation treated as one taxpayer or by a corporation included in such combined unitary return shall be disregarded.

| This act shall take effect as follows and shall amend the following sections: | | |
|---|---|---|
| Section 1 | *from passage and applicable to income years commencing on or after January 1, 2010* | New section |
| Sec. 2 | *from passage and applicable to income years commencing on or after January 1, 2010* | New section |
| Sec. 3 | *from passage and applicable to income years commencing on or after January 1, 2010* | 12-213(a) |
| Sec. 4 | *from passage and applicable to income years commencing on or after January 1, 2010* | 12-214 |
| Sec. 5 | *from passage and applicable to income years commencing on or after January 1, 2010* | 12-217 |

| | | |
|---|---|---|
| Sec. 6 | *from passage and applicable to income years commencing on or after January 1, 2010* | 12-217n(b) |
| Sec. 7 | *from passage and applicable to income years commencing on or after January 1, 2010* | 12-217t(e) |
| Sec. 8 | *from passage and applicable to income years commencing on or after January 1, 2010* | 12-217u(l) |
| Sec. 9 | *from passage and applicable to income years commencing on or after January 1, 2010* | 12-217gg(c) |
| Sec. 10 | *from passage and applicable to income years commencing on or after January 1, 2010* | 12-217gg(h) |
| Sec. 11 | *from passage and applicable to income years commencing on or after January 1, 2010* | 12-218 |
| Sec. 12 | *from passage and applicable to income years commencing on or after January 1, 2010* | 12-218b |
| Sec. 13 | *from passage and applicable to income years commencing on or after January 1, 2010* | 12-218c(c) |
| Sec. 14 | *from passage and applicable to income years commencing on or after January 1, 2010* | 12-218d(d) |
| Sec. 15 | *from passage and applicable to income years commencing on or after January 1, 2010* | 12-219 |

| | | |
|---|---|---|
| Sec. 16 | *from passage and applicable to income years commencing on or after January 1, 2010* | 12-219a |
| Sec. 17 | *from passage and applicable to income years commencing on or after January 1, 2010* | 12-221a |
| Sec. 18 | *from passage and applicable to income years commencing on or after January 1, 2010* | 12-222 |
| Sec. 19 | *from passage and applicable to income years commencing on or after January 1, 2010* | 12-223a |
| Sec. 20 | *from passage and applicable to income years commencing on or after January 1, 2010* | 12-223b |
| Sec. 21 | *from passage and applicable to income years commencing on or after January 1, 2010* | 12-223c |
| Sec. 22 | *from passage and applicable to income years commencing on or after January 1, 2010* | 12-223e |
| Sec. 23 | *from passage and applicable to income years commencing on or after January 1, 2010* | 12-223f |
| Sec. 24 | *from passage and applicable to income years commencing on or after January 1, 2010* | 12-242d |
| Sec. 25 | *from passage and applicable to income years commencing on or after January 1, 2010* | 38a-88a(k) |

***FIN*** *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

## *OFA Fiscal Note*

### *State Impact:*

| Agency Affected | Fund-Effect | FY 11 $ | FY 12 $ |
|---|---|---|---|
| Department of Revenue Services | GF - Revenue Gain | Up to $88.0 million | Up to $88.0 million |
| Department of Revenue Services | GF - Cost | Significant | None |

Note: GF=General Fund

### *Municipal Impact:* None

### *Explanation*

The bill requires member companies of corporate groups paying Connecticut corporation taxes to determine corporation tax liability based on the net income and capital base of the entire group. This results in a potential General Fund revenue gain of up to $88.0 million annually beginning in FY 11.

The estimate is based on data from Maryland, which recently required corporations to report data which would be required to prepare combined returns. According to the Maryland data, combined reporting increased the existing collections by up to 20.0%. It should be noted that the impact in Connecticut will be influenced by: 1) recent measures to prevent the shifting of expenses from Delaware Holding Companies (e.g. interest add-back, trademark/royalty expensing) to companies that have nexus for Connecticut corporation tax purposes, 2) the current provision in Connecticut law that allows taxpayers to elect to file a combined return, and 3) the potential utilization of additional tax credits[1] to further reduce liability under the corporation tax.

[1] There are approximately $1.8 billion in corporation tax credits outstanding.

The bill also results in a significant[2] one-time cost to DRS associated with modifying current tax forms and necessary changes to the taxpayer service center (TSC).

### *The Out Years*

The annualized ongoing revenue impact identified above would continue into the future subject to inflation.

*Sources:* *Maryland State Comptroller, Bureau of Revenue Estimates*
*State of Connecticut Department of Revenue Services Fiscal Year 2008-2009 Annual Report*

[2] The Office of Fiscal Analysis defines "significant" as any amount in excess of $100,000 for the purposes of fiscal notes.

**OLR Bill Analysis**
**sSB 485**

***AN ACT CONCERNING TAX FAIRNESS.***

**SUMMARY:**

This bill requires any company that is (1) a member of a corporate group of related companies meeting certain criteria and (2) subject to the Connecticut corporation tax (a "taxable member"), to determine its Connecticut corporation tax liability based on the net income or capital base of the entire group. Under the bill, a company must use this method of computing tax liability if it is part of a corporate group engaged in a "unitary business," as defined in the bill. The bill thereby eliminates deductions and other adjustments for intercompany transactions between the group's members.

Under current law, a company doing business in Connecticut that is part of a larger group determines its Connecticut net income separately. A corporate group doing business in Connecticut and that files consolidated federal corporate tax return has the option of filing a combined Connecticut return, but first has to separately apportion each member's net income or capital base separately among the states where the member operates. The separately apportioned Connecticut shares of income and losses of group members doing business here are then combined to determine their corporation tax liability. The Department of Revenue Services (DRS) commissioner can also require groups that do not file consolidated federal returns to file combined Connecticut reports under certain circumstances. The bill eliminates these combined return provisions for income years starting on or after January 1, 2010 (§ 19).

The bill establishes (1) the corporate groups that must file unitary returns; (2) how unitary groups must apportion net income, net operating losses, and capital base for Connecticut corporation tax

purposes; (3) treatment of certain tax credits, credit limits, tax surcharges, and minimum taxes in a unitary filing; and (4) filing and estimated tax payment requirements for groups filing unitary returns.

The bill also establishes special estimated tax filing deadlines and safe harbor provisions for taxpayers required to file unitary returns in 2010 and makes conforming changes.

EFFECTIVE DATE: Upon passage and applicable to income years starting on or after January 1, 2010.

## § 3 — UNITARY BUSINESS AND COMBINED GROUP

The bill defines a "unitary business" as a single economic enterprise that is interdependent, integrated, or interrelated enough through its activities to provide mutual benefit and produce significant sharing or exchanges of value among its entities or a significant flow of value among its separate parts. A unitary business can be either separate parts of a single entity or a group of separate entities under common ownership. Businesses conducted or connected through partnerships or S corporations ("pass-through entities") may be considered unitary if they meet certain conditions.

Under the bill, businesses are considered to be under common ownership if the same entity or entities directly or indirectly own more than 50% of voting control of each of them. The owners do not themselves have to be members of the combined group. Indirect control must be determined according to the federal tax law.

A "combined group" is all the companies that (1) have common ownership, (2) are engaged in a unitary business, and (3) have at least one member that is subject to the Connecticut corporation tax.

## § 2 — BOUNDARIES OF A UNITARY BUSINESS' NET INCOME, CAPITAL BASE, AND APPORTIONMENT FACTORS

For purposes of a unitary tax filing and unless the designated taxable group member (see below) responsible for filing the group's unitary return chooses otherwise, the bill requires a combined group to

determine the net income, capital base, and apportionment factors of each of its taxable members on a "water's-edge basis." Under the bill, this means that a group must include the net income, capital base, and apportionment factors of nontaxable members only if they:

1. are incorporated in, or formed under the laws of, the United States, any state, the District of Columbia, or a U.S. territory or possession; or

2. directly or indirectly earn more than 20% of their income from intangible property or service-related activities whose costs are generally deductible from federal taxes against the income of other group members, either currently or over a period of time. These nontaxable members must be included only to the extent of this income and its related apportionment factors.

The bill gives a combined group the option of determining its members' net income, capital base, and apportionment factors on a world-wide basis. The election of a world-wide basis for a unitary filing must be made on an original tax return filed on time by the group's designated taxable member for an income year. A world-wide election is binding for the income year in which it is made and the following 10 years.

## § 1 — NET INCOME AND CAPITAL BASE

### *Net Income or Loss*

When determining the total income or loss subject to apportionment for Connecticut corporation tax purposes, the bill requires the combined group to include and aggregate the following.

1. For each group member incorporated in the United States and included in a consolidated federal corporate return, its gross income minus Connecticut corporation tax deductions as if it were not consolidated for federal tax purposes.

2. For each group member not included in a consolidated federal return but required to file its own return, its gross income

minus Connecticut corporation tax deductions.

3. For each member incorporated outside the United States, not included in a federal consolidated return and not required to file its own federal return, the income determined from regularly maintained profit and loss statements for each foreign office or branch adjusted on any reasonable basis to conform to U.S. accounting standards and expressed in U.S. dollars. Reasonable alternative procedures may be applied if the DRS commissioner determines that the reported income reasonably approximates the income determined under the Connecticut corporation tax law.

4. If the unitary business has income from a pass-through entity, the members' direct and indirect share of that entity's unitary business income.

Under current combined filings, most income and deductions from inter-company transactions within a combined group must be eliminated. The bill establishes requirements for treating the following income and deductions in a unitary filing.

1. As under a current combined filing, dividends paid out of the unitary group's earnings by one group member to another must be eliminated, except the bill excludes dividends from businesses that are part of the unitary business but not part of the combined group (i.e., not more than 50% owned by the same parent.)

2. Business income from an intercompany transaction with another group member must be deferred as required under federal tax rules unless the object of the transaction is sold or otherwise removed from the unitary business or the buyer and seller cease to be members of the same combined group.

3. Charitable expenses incurred by a group member may be deducted from the combined group's net income, subject to

federal income limits applicable to the entire group's business income. If the part of the deduction is carried over to a later year, it must be treated in that year as incurred by the same group member.

4. Capital gains and losses must be combined for all members without netting among classes of gains and losses, apportioned to Connecticut, and applied to the income or loss of the Connecticut taxable members. If the deduction for a loss is limited and a loss carryover is required, the loss must be treated in a later year as being incurred by the same member.

5. Expenses directly or indirectly attributable to federally tax-exempt income must be disallowed in determining the combined group's net income.

### *Income Apportionment Factors*

By law, multistate companies subject to the Connecticut corporation tax must apportion their net income or loss and alternate capital base using statutory apportionment formulas. Most companies must use a formula that combines the ratios of their property, payroll, and sales (receipts) in Connecticut to all their property, payroll, and sales. However, some types of businesses, including manufacturers, broadcasters, and financial institutions, are allowed to use a single factor apportionment formula based entirely on the ratio of their sales in Connecticut to all their sales.

In apportioning its income or loss for the Connecticut corporation tax, this bill requires each taxable member of a combined group to use the otherwise applicable Connecticut statutory apportionment percentage. It specifies how taxable members of the combined group must incorporate the property, payroll, and sales of nontaxable group members into the apportionment factors they use to apportion the group's income for purposes of the taxable members' Connecticut corporation tax liability.

Under the bill, though each taxable member's apportionment is

based on the Connecticut apportionment formula that applies to that member, the taxable member must add in a share of the nontaxable members' sales, property, and payroll factors as follows:

1. Each taxable member must add to its sales factor numerator a share of the aggregate sales of the groups' nontaxable members. This share is the ratio of the taxable member's Connecticut sales to the Connecticut sales of all the group's taxable members.

2. The property and payroll factor denominators are the aggregate property and payrolls for the entire group, including taxable and nontaxable members, even if some group members are subject to single-factor apportionment (i.e., based on sales only).

3. Transactions between or among group members must be eliminated in determining the apportionment factors.

Once the applicable apportionment factors for each taxable member have been determined, they must be applied to the combined group's taxable income to determine each taxable member's net income or loss apportioned to Connecticut.

### *Net Operating Loss*

Once it calculates its share of net income or loss apportioned to Connecticut, the bill allows each taxable group member to deduct its share of the group's net operating loss (NOL) from that income. It allows the following NOL carryovers.

1. For income years starting on or after January 1, 2010, if the combined group's net income computation results in a net operating loss, the taxable members can carry forward the share apportioned to Connecticut consistent with existing NOL carryover limits (i.e., for up to 20 years). If the taxable member has more than one NOL carryover, it must apply them in the order they were incurred, deducting the older one first. The bill allows a taxable member who has an NOL carryover derived from the combined group in an income year beginning on or

after January 1, 2010, to share it with other taxable group members if they were part of the group when the loss was incurred. Any such sharing reduces the taxable member's original NOL carryover.

2. A taxable member can deduct an NOL carryover derived from either pre-January 1, 2010 losses or losses incurred before the taxable member joined the combined group, but it cannot share it with other group members.

### *Net Income Tax Calculation*

As under current law, each taxable member must calculate its net income tax liability by multiplying its Connecticut apportioned net income or loss by the statutory corporation tax rate of 7.5%.

### *Capital Base Apportionment*

By law, corporations must calculate their Connecticut corporation tax liability on the basis of both their net income and capital base and pay the higher of the two amounts.

The bill requires combined groups to determine their alternative capital bases by combining their separate bases, including those of the nontaxable members, as determined under current law, but excluding deductions for inter-corporate or private company stockholdings in the combined group. Group members that are financial services companies must calculate the value of their annual capital base as required by existing law.

A taxable member must apportion the combined group's capital base according to the ratio of the taxable member's individual capital base to that of the combined capital bases of all taxable members of the group. As with the income apportionment, a share of the nontaxable members' capital bases must be included according to the ratio of the taxable member's Connecticut capital base to the combined Connecticut capital bases of all the group's taxable members.

### *Minimum Tax*

Under the bill, as under existing law, taxable members must pay a minimum tax of $250 regardless of tax credits. In addition, no taxable member may use tax credits to reduce its tax liability by more than 70% of the amount it would owe without credits.

## § 18 — DESIGNATED TAXABLE MEMBER

The bill requires a combined group to designate one of its Connecticut taxable members to file the unitary return and pay the tax on behalf of all its taxable members. To this end, the designated member may, on the taxable and nontaxable members' behalf, (1) sign a unitary return, (2) apply for filing extensions, (3) agree to an examination or assessment of the return, (4) make offers of compromise and closing agreements regarding tax liability, and (5) receive tax refunds.

A combined group member whose income year is different from that of the rest of the group must report amounts from its return for its income year that ends during the group income year. No such reporting is required until the beginning of the member's first income year starting on or after January 1, 2010.

The bill allows the designated taxable member to recover the payments from the other taxable members and prohibits those members from holding the designated taxable member liable for the payments. However, each taxable member of the combined group is jointly and severally liable for the taxes plus any interest, penalties, or additions due from any other taxable member.

A combined group required to name a designated member must give the DRS commissioner written notice of the selection by the date the tax is due. The commissioner must approve any change in the designated member.

The bill gives the commissioner the sole discretion to (1) send notices, make deficiency assessments, and provide tax refunds and credits to the designated member or any other group member and (2) require a unitary return to be filed electronically and any tax payment

to be made by electronic funds transfer.

### § 24 — ESTIMATED TAX

The bill applies estimated tax requirements to taxable members of combined groups required to file unitary returns. It makes the designated taxable member responsible for paying the estimated tax installments.

By law, corporations must pay the following percentages of their annual taxes by the following dates: 30% by March 15, 40% by June 15, 10% by October 15, and 20% by December 15. The bill extends the due dates for the first estimated tax payment for combined groups whose 2010 income years start in January, February, or March 2010 to June 15, 2010; July 15, 2010; and August 15, 2010, respectively. Such groups must pay 70% (i.e., a combination of the first and second payment) of the required annual payment on those dates.

Under the bill, taxable members of combined groups required to file unitary returns are not subject to interest and penalties for underpaying estimated tax in 2010 if:

1. they pay estimated taxes equal to at least 90% of that shown on their unitary tax filing for the 2010 income year; or

2. if the 2009 income year was a 12-month year, the taxable members of the combined group pay estimated taxes of 100% of the tax liability, before credits, shown on either their individual separate 2009 returns or their optional 2009 combined return, as applicable.

### §§ 6-17; 20-23 & 25 — CONFORMING SECTIONS

The bill makes additional statutory changes to conform to the mandatory unitary filing requirements and the elimination of current combined reporting provisions starting with income years beginning on or after January 1, 2010.

### COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable
Yea 40 Nay 15 (04/06/2010)